

REMARKS

In the Office Action, Claims 1, 3 and 4 were rejected under 35 U.S.C §103(a) as being unpatentable over Publication No. 2002/0126675 A1 of Yoshimura et al. in view of Publication No. 2007/0076723 A1 of Chen. Claims 2 and 5 were found to be allowable if rewritten in independent form to include all limitations of the base claim and any intervening claims.

The Examiner's finding of allowable subject matter in Claims 2 and 5 is respectfully acknowledged.

Claims 1, 2, 4 and 5 have been amended and Claim 6, which combines the allowable subject matter found in Claim 5 with the subject matter of Claim 4, from which Claim 5 depends, is presented. No new subject matter is presented.

In the Office Action, ¶¶ 0008 and 0059 of Yoshimura et al. are cited as disclosing "determining transmission order so that the real time traffic is transmitted preferentially over the non-real time traffic." (Office Action, page 2.) The cited paragraphs do not distinguish real-time from non-real time traffic. Rather, the cited paragraphs of Yoshimura et al. disclose classifying ... IP packets ... on the basis of the QoS requirement obtained from, for example, IP header information of the packets." (¶ 0059 of Yoshimura et al.)

To advance prosecution, Claims 1 and 4 have been amended to clarify that the determining is based on a ratio of real-time traffic to total traffic arrived at each session, which neither Yoshimura et al. nor Chen discloses or suggests.¹

Claim 6, which is the other pending independent claim, is a newly presented claim that combines the allowable subject matter found in Claim 5 with the subject matter of Claim 4, from which Claim 5 depends. At least in view of the finding of allowable subject matter, Claim 6 is in condition for allowance.

For at least the above reasons, all of the pending claims, i.e. Claims 1-6, are believed to be in condition for allowance.

¹ For completeness, it is noted that the U.S. Patent and Trademark Office database indicates that the cited publication of Chen has a 35 U.S.C. 371(c) date of December 8, 2006, which is after the November 26, 2003 filing date of the pending application. Accordingly, the cited Chen publication is not prior art to the pending application.

Independent Claims 1, 4 and 6 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2, 3 and 5, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2, 3 and 5 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-6, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", is written over a horizontal line.

Paul J. Farrell
Registration No. 33,494
Attorney for Applicant(s)

THE FARRELL LAW FIRM, P.C.
333 Earle Ovington Blvd., Ste. 701
Uniondale, New York 11553
(516) 228-3565